



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

22

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p style="text-align: center;"><u>Criminal Appeal No.299/2001</u></p> <p><u>APPELLANT</u> Brijlal Pobiya S/o Phuddul Pobiya aged 38 years resident of village Dhauramurha, P.S. Pasan - Tah. Kataghora, District Korba (Chhattisgarh)</p> <p style="text-align: center;"><u>Versus</u></p> <p><u>RESPONDENT</u> State of Chhattisgarh, Through P.S. Pasan, District Korba (Chhattisgarh)</p> <p style="text-align: center;"><u>CRIMINAL APPEAL u/s 374 (2) OF THE CODE OF CRIMINAL PROCEDURE</u></p> <p>D.B.: HON'BLE SHRI L.C BHADOO, J. & HON'BLE SHRI SUNIL KUMAR SINHA, J.</p> <p style="text-align: center;"><u>ORAL JUDGMENT</u> (28.09.2007)</p> <p><u>L.C. Bhadoo, J:-</u></p> <p>Ms. Minu Banerjee, Counsel for the appellant. Shri U.K.S. Chandel, Panel Lawyer for the State. Heard.</p> <p>This appeal is directed against the judgment of conviction and order of sentence dated 25.01.2001 passed by the First Additional Sessions Judge, Bilaspur (C.G.) in S.T. No.281/2000, whereby, the learned Additional Sessions Judge after holding the accused/appellant guilty of the</p>	

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मामला क्रमांक G. A. - 299/01 सन् 200

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	<p>offence punishable under Section 302 of IPC for committing murder of his wife - Brihaspatiya Bai, sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for 6 months.</p> <p>Case of the prosecution in brief is that in the night of 13/4/2000 at 8:00 p.m., Brihaspatiya Bai (since deceased) , wife of the accused/appellant was sleeping along with her child in the courtyard of the house. Accused/appellant came there, demanded money from Brihaspatiya Bai for purchasing liquor, when she denied to give money, accused attacked her with a stone and thereafter, with the club on her chest and ribs, as a result of which, Brihaspatia Bai succumbed to the injuries spontaneously. Accused/appellant ran away from the place of occurrence. The matter was reported on 14/4/2000 by Sadan Singh. The SHO Police Station Pasan registered the First Information Report (Ex.-P/1). The merged intimation (Ex.-P/2) was also given by Sadan Singh. The Investigating Officer left for the scene of occurrence and after giving notices to Panchas (Ex.-P/5), prepared inquest (Ex.-P/6) on the body of deceased. Blood stained soil and plain soil were seized from the place of occurrence as also one wood, one stone and one <i>chadar</i> stained with blood were seized under Ex.-P/7. Site plan (Ex.-P/8) was prepared of the place of occurrence, body was sent</p>	

मामला क्रमांक G.A. - 299/01 सन् 200

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	<p>for postmortem examination to Primary Health Centre, Pasan under Ex.-P/16, where, Dr. K.S. Pendro conducted the postmortem. He opined that cause of death was asphyxia due to throttling. He prepared postmortem report (Ex.-P/12). Site plan (Ex-P/17) was prepared by Halka Patwari. Seized articles were sent to the Forensic Science Laboratory, Sagar, from where, report (Ex-P/15) was received.</p> <p>After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Katghora, who in turn committed the case to the Sessions, Judge, Bilaspur, from where, the learned Additional Sessions Judge received the case on transfer for trial.</p> <p>The prosecution in order to establish charge against accused/appellant examined 10 witnesses. The statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the material appearing against him in the prosecution evidence.</p> <p>The learned Additional Sessions Judge after hearing the counsel for the respective parties convicted and sentenced the accused/appellant as aforementioned.</p> <p>We have heard Ms. Minu Banerjee, Counsel for the appellant and Shri U.K.S. Chandel, Panel Lawyer for the State.</p> <p>Ms. Banerjee has not disputed the homicidal death of Brihaspatiya Bai. Moreover, Dr.K.S. Pendro (PW-8) has stated</p>	

25

मामला क्रमांक G.A - 299/21 सन् 200

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	<p>that on 15.4.2000, he conducted postmortem on the body of Brihaspatia Bai and prepared report (Ex-P/12). Cause of death was asphyxia, as a result of throttling. Therefore, in view of the above, it is established that death of Brihaspatia Bai was homicidal in nature.</p> <p>As far as involvement of the accused/appellant in crime in question is concerned, the prosecution has examined mainly 3 witnesses namely Sadan Singh (PW-1) who lodged the report, Sohniya Bai (PW-2 -mother of the deceased), Sukhmatiya Bai (PW-3 - sister-in-law of the deceased). PW-1 - Sadan Singh has stated that in fact, he had gone to attend the marriage in the house of Dev Singh, which is at a distance of about 1 ½ - 2 Km. He had not seen the incident, whatever Sohniya Bai disclosed him, he made the report on that basis. PW-2 - Sohniya Bai has also been declared hostile. She has stated that she had not seen the accused/appellant attacking the deceased. She simply stated that in the evening at about 4:00 p.m, accused/appellant quarrelled with his wife - Brihaspatiya Bai. She further stated that Sukhmatiya Bai disclosed her that she saw accused/appellant standing in the courtyard of the house. Even in the cross-examination, this witness has stated that it is incorrect to say that accused/appellant attacked Brihaspatiya Bai with a stone in her presence. It is also incorrect to say that</p>	

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	<p>accused/appellant attacked Brishpatiya Bai with the club.</p> <p>PW-3 Sukhmatiya Bai has stated that she heard cries of the child. Accused/appellant was standing in the courtyard of his house. When she opened the door, the accused/appellant ran away towards the kitchen garden. Brihaspatiya Bai was sleeping in the courtyard, her child was weeping, she saw blood oozing out of the nose and mouth of Brihaspatiya Bai, thereafter, she called the villagers. She has also been declared hostile and on cross-examination by the Government Pleader, she did not disclose that accused/appellant attacked Brihaspatiya Bai with a wooden plank. When Sukhmatiya Bai was confronted with the police case diary statement, she stated that she has not given the said statement. She stated that it is incorrect to say that accused/appellant committed murder of Brihaspatiya Bai by pressing her neck with a wooden plank. There is no other evidence regarding involvement of the accused/appellant in crime in question. Even though this witness has stated that when she heard cries of the child, she looked towards the courtyard of accused/appellant, where he was standing and as soon as she opened the door, he ran away, except this, there is no clear and cogent evidence on record to show that the accused/appellant caused death of the deceased or he was seen by anybody else attacking the deceased or there is any other circumstantial evidence. The stone and wooden</p>	

मामला क्रमांक G.A. - 299/01 सन् 200

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	<p>6</p> <p>plank were recovered from the place of occurrence and not at the instance of the accused, nobody has seen the accused holding the stone or wooden plank.</p> <p>In view of the above, there is no legal and clinching evidence on record to connect the accused/appellant with the crime in question. The suspicion however strong cannot take place of proof. Therefore, the judgment of conviction and order of sentence cannot be sustained.</p> <p>In the result, the appeal succeeds.</p> <p>The appellant is acquitted of the charge under Section 302 of the IPC. The conviction and sentence imposed upon him are set aside. It is stated that the accused/appellant is in detention since 16/6/2000, therefore, he be set at liberty forthwith if not required in any other case.</p> <p>Sd/- L.C. BHADOO Judge</p>	<p>Sd/- SUNIL KUMAR SINHA Judge</p>

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